

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

JOAN M. LOVETT, M.D.

Case No. 800-2015-015165

**Physician's and Surgeon's
Certificate No. A34054**

Respondent

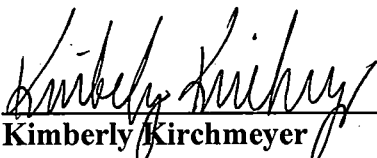
DECISION

**The attached Stipulation for Surrender of Certificate is hereby
adopted as the Decision and Order of the Medical Board of California,
Department of Consumer Affairs, State of California.**

This Decision shall become effective at 5:00 p.m. on October 26, 2018

IT IS SO ORDERED August 2, 2018.

MEDICAL BOARD OF CALIFORNIA

By: 
Kimberly Kirchmeyer
Executive Director

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
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Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **JOAN M. LOVETT, M.D.**
12 **919 The Alameda**
13 **Berkeley, CA 94707-2387**

14 Physician and Surgeon's Certificate No. A 34054

15 Respondent

Case No. 800-2015-015165

OAH No. 2018040793

STIPULATION FOR SURRENDER OF
CERTIFICATE

16
17 In the interest of a prompt and speedy resolution of this matter, consistent with the public
18 interest and the responsibility of the Medical Board of California, Department of Consumer
19 Affairs, (Board), the parties hereby agree to the following Stipulation for Surrender of Certificate
20 which will be submitted to the Board for its approval and adoption as the final disposition of Case
21 No. 800-2015-015165.

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California, Department of Consumer Affairs, who brought this action solely in her official
24 capacity. She is represented in this matter by Xavier Becerra, Attorney General of the State of
25 California, by Lawrence Mercer, Deputy Attorney General.

26 2. Joan M. Lovett, M.D. (Respondent) is represented in this matter by her attorneys Ann
27 H. Larson and Craddick, Candland & Conti, 2420 Camino Ramon, Suite 202, San Ramon, CA
28 94583.

1 9. Respondent agrees to surrender her Physician's and Surgeon's Certificate for the
2 Board's formal acceptance, thereby giving up her right to practice medicine in the State of
3 California, effective October 26, 2018.

4 **RESERVATION**

5 10. The admissions made by Respondent herein are only for the purposes of this
6 proceeding or any other proceedings in which the Medical Board of California or other
7 professional licensing agency in any state is involved, and shall not be admissible in any other
8 criminal or civil proceedings.

9 **CONTINGENCY**

10 11. This Stipulation shall be subject to the approval of the Board. Respondent
11 understands and agrees that Board staff and counsel for Complainant may communicate directly
12 with the Board regarding this Stipulation, without notice to or participation by Respondent or her
13 attorneys. If the Board fails to adopt this Stipulation as its Order in this matter, the Stipulation
14 shall be of no force or effect; it shall be inadmissible in any legal action between the parties; and
15 the Board shall not be disqualified from further action in this matter by virtue of its consideration
16 of this Stipulation.

17 12. The parties understand and agree that facsimile and electronic format copies of this
18 Stipulation for Surrender of Certificate, including facsimile and electronic format signatures
19 thereto, shall have the same force and effect as the originals.

20 **STIPULATION AND ORDER**

21 **IT IS THEREFORE STIPULATED AND ORDERED** as follows:

22 1. **SURRENDER** Respondent hereby agrees that she will surrender her wall and
23 wallet Physician's and Surgeon's Certificates and all other indicia of her right to practice
24 medicine in the State of California to the Board or its representative on or before October 26,
25 2018, and the Board agrees to accept this surrender in resolution of this matter.

26 2. **REINSTATEMENT** Respondent fully understands and agrees that if she ever files
27 an application for re-licensure or reinstatement in the State of California, the Board shall treat it
28 as a petition for reinstatement. Respondent must comply with all the laws, regulations and

1 procedures for reinstatement of a revoked license in effect at the time any petition is filed and she
2 understands and agrees that all of the allegations and causes for discipline contained in
3 Accusation No. 800-2015-015165 will be deemed to be true, correct and admitted by her for
4 purposes of the Board's determination whether to grant or deny the petition. Respondent agrees
5 that she will not petition for reinstatement for at least two (2) years following the effective date of
6 this decision. Respondent hereby waives any time-based defense she might otherwise have to the
7 charges contained in Accusation No. 800-2015-015165 including, but not limited to, the equitable
8 defense of laches.

9 3. Respondent understands that by signing this Stipulation, she is enabling the Board to
10 issue its order accepting the surrender of her license without further process. She further
11 understands that upon acceptance of this Stipulation by the Board, and as of October 26, 2018,
12 she will no longer be permitted to practice as a physician and surgeon in California.

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14 //

ACCEPTANCE

I, JOAN M. LOVETT, M.D., have carefully read the above Stipulation for Surrender of Certificate, and enter into it freely and voluntarily and with full knowledge of its force and effect, do hereby agree to surrender my Physician's and Surgeon's Certificate Number A34054 to the Medical Board of California for its formal acceptance. By signing this Stipulation to surrender my license, I recognize that as of October 26, 2018, I will lose all rights and privileges to practice as a physician and surgeon in the State of California and, if I have not already done so, I also will cause to be delivered to the Board both my license and wallet certificates on or before the effective date of the decision.

Date:

July 26, 2018

Joan M. Lovett, M.D.
JOAN M. LOVETT, M.D.
Respondent

I have read and fully discussed with Respondent JOAN M. LOVETT, M.D., the terms and conditions and other matters contained in the Stipulation for Surrender of Certificate. I approve its form and content.

Dated: 7/26/18

CRADDICK, CANDLAND & CONTI

Ann H. Larson
ANN H. LARSON
Attorneys for Respondent

ENDORSEMENT

The foregoing Stipulation for Surrender of Certificate is respectfully submitted for consideration by the Medical Board of California, Department of Consumer Affairs.

Dated: *July 27 2018*

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General


LAWRENCE MERCER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
Accusation No. 800-2015-015165

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1 XAVIER BECERRA
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2 JANE ZACK SIMON
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 29 2017
BY: ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **JOAN M. LOVETT, M.D.**
14 919 The Alameda
Berkeley, CA 94707-2387

15 Physician's and Surgeon's Certificate No. A34054,
16 Respondent.

Case No. 800-2015-015165

ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California (Board).
22 2. On or about July 2, 1979, the Medical Board issued Physician's and Surgeon's
23 Certificate Number A34054 to Joan M. Lovett, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein
25 and will expire on July 31, 2018, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Medical Board of California under the authority
3 of the following laws. All section references are to the Business and Professions Code unless
4 otherwise indicated.

5 4. Section 2227 of the Code provides that a licensee who is found guilty under the
6 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
7 one year, placed on probation and required to pay the costs of probation monitoring, or such other
8 action taken in relation to discipline as the Board deems proper.

9 5. Section 2234 of the Code, states:

10 "The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 "... (b) Gross negligence.

14 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
15 omissions. An initial negligent act or omission followed by a separate and distinct departure from
16 the applicable standard of care shall constitute repeated negligent acts.

17 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
18 for that negligent diagnosis of the patient shall constitute a single negligent act.

19 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
20 constitutes the negligent act described in paragraph (1), including, but not limited to, a
21 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
22 applicable standard of care, each departure constitutes a separate and distinct breach of the
23 standard of care.

24 "(d) Incompetence."

25 6. Section 2266 of the Code states that the failure to maintain adequate and accurate
26 medical records is unprofessional conduct.

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Incompetence)

7. Respondent Joan M. Lovett, M.D. is subject to disciplinary action under section 2234 and/or 2234(b) and/or 2234(c) and/or 2234(d) in that Respondent was grossly negligent and/or engaged in repeated negligent acts and/or was incompetent in her care of Patient A.¹ The circumstances are as follows:

8. Respondent is a pediatrician with a specialization in behavioral pediatrics.

9. Patient A first came under respondent's care in 2010. In a later summary of this care, Respondent stated that the patient presented with "intrusive thoughts and frustration about her inadequacies and her difficulties joining groups, relating to friends and new acquaintances, her difficulty with speech and her physical awkwardness, and her learning disabilities and school problems." Respondent stated that Patient A suffered from depression and anxiety, which were treated with good results.

10. After 2010, Patient A did not see Respondent for several years. Of significance, in the period between August and October, 2013, Patient A suffered a protracted illness characterized by fatigue, myalgia and neurologic symptoms, which may have been a second episode of affective illness. In the period between February and July, 2014, Patient A was treated for possible polycystic ovarian syndrome (PCOS), which was characterized by dysfunctional bleeding, irregular menstrual cycle and acne. Patient A was prescribed birth control pills and, later, a different oral contraceptive was substituted in response to change in her mood. In April-June, 2014 Patient A underwent a neuropsychological work up to explore her learning disabilities and school problems. She was given a diagnosis of attention deficit hyperactivity disorder (ADHD), inattentive type.

11. Patient A returned to Respondent's care on March 24, 2014. Now in the 8th grade, Patient A presented with more symptoms of the depression she suffered in the 4th grade. Respondent noted that Patient A "feels like a ghost in the hallway. When w/ a group of people."

¹ The patient's name is replaced with a letter to protect privacy interests. Respondent will be provided with full information regarding the patient in discovery.

1 Significantly, the patient had engaged in cutting herself on the wrist and upper arm. Respondent
2 charted: "Impression: "8th grader with recent cutting (2 very superficial scratches) on left wrist
3 and left antecubital fossa."² Patient A's family history of depression and bipolar disorder is
4 mentioned in Respondent's note, but the nature and extent of the family history is not detailed.
5 Patient A's cutting was discussed, and as Respondent explained in a later interview, she referred
6 to "staying and not staying", but was evasive about what she meant. An in-depth assessment of
7 the significance of Patient A's self-inflicted injury -- including the content and chronicity of the
8 suicidal thoughts, the existence and details of a suicide plan, access to the means described in the
9 plan, the level of intent and stressors, emotional pain, behavioral regulation and social support --
10 was either not performed or was not documented. Respondent employed an eye movement
11 desensitization and reprocessing (EMDR) protocol³ with the purpose of "taking the charge off of
12 the upsetting memory" and "switching the negative distortive belief to something that's true and
13 useful."

14 12. On subsequent visits in April, 2014, Patient A's sadness was discussed, with a focus
15 on getting rid of the feelings and focusing on "inner peace," rather than exploring and describing
16 the thoughts and feelings in detail. During this time, Patient A exhibited sudden changes in mood
17 that included depressive (diminished ability to concentrate, feelings of worthlessness), potentially
18 paranoid (people don't want to be with me) and manic (agitated, pacing, talking to herself),
19 indicating the possibility of early onset mood disorder and warranting the reconsideration of the
20 use of EMDR to address Patient A's condition. There is no indication in Respondent's chart that
21 she considered this possibility. In a subsequent interview, Respondent denied that Patient A was
22 paranoid or manic.

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24
25 ² The clause describing the locations of the cuts are written into the page margin and may
be late entries. In a subsequent interview, Respondent acknowledged adding undated and
untimed entries to the patient's chart.

26 ³ Respondent described the EMDR therapy method as involving multiple phases:
27 assessment and history taking and preparation, desensitization, reprocessing, body scan and re-
28 evaluation. Respondent acknowledged that the patient chose not to progress very far in the phases
of EMDR therapy.

1 13. In June, 2014, a period of elevated mood ended and Patient A experienced sudden
2 onset of depression and fatigue. On June 26, 2014, her mother notified Respondent that A was
3 "having suicidal ideations again." The same day, in an email with the subject, "URGENT – [A]
4 SUICIDAL," Patient A's father forwarded to Respondent an entire Facebook chat thread where
5 Patient A expressed feelings of severe depression and suicidal impulses -- including a plan to
6 commit suicide using kitchen knives -- that she felt incapable of controlling or could only control
7 with a lot of difficulty.

8 14. At a visit on June 27, 2014, Patient A expressed her feelings as "numb sadness" and
9 "magnified sadness" which was painful. According to Respondent's notes, the patient traced the
10 first episode of "deep sadness" back more than six months to the previous December. Her
11 discomfort was worse in social situations. Respondent later described her assessment of Patient
12 A's depression at this point in time to be "moderate." She had Patient A write a promise not to
13 harm herself in the medical chart. Despite the disturbing content of the Facebook chat thread,
14 Respondent did not perform a detailed suicidal assessment, nor did she comment on the Facebook
15 communications. Respondent did not consider a change in treatment or a referral to a
16 psychiatrist. In a later interview, Respondent explained that she planned to identify possible
17 targets for EMDR therapy to "take the charge off" and "change her way of thinking about it."

18 15. On June 30, 2014, Patient A and her mother both reported to Respondent that she
19 experienced auditory hallucinations, in which she imagined that she heard a cousin (who was
20 living across the country) repeatedly saying "please." In response to these new reports of
21 depression and an acute psychotic symptom (auditory hallucinations), Respondent treated Patient
22 A with EMDR techniques, but did not consider antipsychotic medications or alternative
23 treatments. Respondent's diagnosis for the patient continued to be depression and anxiety⁴,
24 despite evidence that a more severe disorder might be present. Patient A's episodic periods of
25

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27 ⁴ Albeit her ongoing diagnosis was depression and anxiety, Respondent used diagnostic
28 codes 6264 (irregular menstruation) and 6261 (scanty or infrequent menstruation) which did not
reflect the diagnoses or conditions being treated.

1 depression continued, leading to a decision to take her off the oral contraceptive she was taking
2 for PCOS in July.

3 16. Patient A's pattern of rapidly fluctuating moods continued cycling between episodes
4 of depression and suicidal ideation -- including using a gun to commit suicide -- and periods of
5 normalcy during which she was "back to her old self" or even "excited." In a later interview,
6 Respondent stated that she did not consider the sudden mood elevations to represent hypomania
7 or mania. Respondent's chart does not record consideration whether the patient's episodic
8 increase in activity and abnormal elevation of mood might indicate pediatric bipolar disorder.

9 17. On December 17 and 18, 2014, Patient A's mother advised in emails⁵ that her
10 daughter had been researching ways to commit suicide by Advil overdose and that she had written
11 "goodbye letters" to boys in her school. On December 18, 2014, Respondent charted that Patient
12 A had written three suicide letters and crumpled them up and that she couldn't focus on
13 homework, but did not mention A's research on means of committing suicide. She did note
14 Patient A's report that a week earlier, she had "had painful feelings and went upstairs to manage
15 it. Claimed she was going to sleep. Cut left antecubital fossa (elbow pit) . . . in part wanted to
16 hurt self and in part didn't want to hurt self."

17 18. On December 19, 2014, Patient A's mother sent Respondent an email at 12:15 p.m.,
18 stating that she believed Patient A needed to be on medication. In an email timed at 12:31 p.m.
19 Respondent advised that she called in the prescription for Wellbutrin SR⁶ and gave instructions
20 for taking the medication. Respondent did not refer Patient A to a psychiatrist, but in a later
21 interview she stated that she consulted with one prior to prescribing the antidepressant.

22 19. In an email exchange on January 4, 2015, Respondent discouraged Patient A's mother
23 from allowing her to take Concerta, which she had been using for her ADHD for several years,

24
25 ⁵ Patient A's parents were in constant communication with Respondent, by telephone and
26 email; however, Respondent did not record much of this information and/or did not retain
27 multiple, significant parental communications regarding Patient A.

28 ⁶ Wellbutrin is a trade name for bupropion hydrochloride, a medication indicated for
treatment of depression in adults. Wellbutrin is not the first line treatment for adolescent major
depression and is associated with higher morbidity and mortality indices than the recommended
treatment, fluoxetine (Prozac).

1 stating that A was doing fine in school without stimulants and that Wellbutrin was likely helping
2 her focus on her studies. On January 6, 2015, Patient A's mother reported that A had a panic
3 attack during a Physics exam, despite having been given unlimited time to complete it, and did
4 poorly on the exam. Concerta was then re-started. On subsequent visits, Respondent noted that
5 Patient A appeared to be benefitting from the Wellbutrin, but she did not use any self-inventories
6 for depression screening to gauge the effectiveness of the treatment with Wellbutrin. In a January
7 28, 2015 email, A's father advised in two emails to Respondent that Patient A stated that she had
8 not been better at all and had been throwing away her lunch every day. Respondent did not read
9 and/or did not retain the father's emails. In a later interview, Respondent stated that she believed
10 a minimum two-month trial would be necessary to determine whether the medication was
11 effective.

12 20. Respondent's notes for the following weeks state that Patient was doing well and at
13 times was "giddy" and excited about boys that she had crushes on. On March 5, 2015, Patient A's
14 mother wrote to Respondent and stated that A would be resuming the birth control pill for
15 symptoms of PCOS and expressed the concern that, on prior courses, she had complained that the
16 medication "amplified the [negative] feelings." Respondent did not comment on the resumption
17 of the oral contraceptive.

18 21. On May 26, 2015, Patient A's mother reported that A had become paranoid during a
19 school assembly, feeling that people were talking about her behind her back. On the morning of
20 May 27, 2015, Respondent answered and offered a telephone appointment, as Patient A was
21 studying for finals and was too busy to get to her office. On the same day, May 27, Patient A's
22 mother advised that she had expressed feelings that members of her brother's math class were
23 talking about her. Patient A also met with a school counselor on that day and discussed having
24 suicidal thoughts. The counselor had her sign a contract for safety. These facts, as well as the
25 fact that Patient A stated she had been thinking about knives and using knives to hurt herself,
26 were reported to Respondent. That evening Respondent spoke with Patient A by telephone and A
27 stated again what she had told the counselor. Respondent did not schedule an urgent appointment
28 with Patient A, nor did she recommend that her parents take her to an emergency room for suicide

1 evaluation. In a subsequent interview, Respondent stated that her plan was "to hold the course"
2 until A's hormonal status was stable and "if she wasn't better" to refer her to a psychiatrist. A
3 face-to-face appointment with Patient A was scheduled for June 5, 2015.

4 22. On June 1, 2015, Patient A retired to her bedroom, wrote a suicide note and
5 overdosed on the Wellbutrin prescribed by Respondent.

6 23. After Patient A's suicide, Respondent reviewed her "entire chart" with a psychiatrist.
7 On June 4, 2015, she added an extensive note relating additional information not contained in the
8 chart and, at some point in time, also one or more late entries to the chart, which are not dated or
9 timed to reflect the time added.

10 24. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject
11 to disciplinary action based on her gross negligence and/or repeated negligent acts and/or
12 incompetence in her care and treatment of Patient A, including but not limited to, the following:

13 A. Respondent failed to obtain and/or document a detailed family history of psychiatric
14 illness in her diagnostic evaluation;

15 B. Respondent failed to conduct a thorough assessment of the patient's self-inflicted
16 injury at the initial visit in March, 2014;

17 C. Respondent used EMDR, which is not an evidence-based treatment for adolescent
18 depression, to treat the patient's anxiety and depression;

19 D. Respondent failed to adjust her treatment plan when the patient's depressive
20 symptoms worsened in June, 2014;

21 E. Respondent failed to perform a full assessment of the patient's suicidality, despite
22 patient's intense suicidal ideation, reported plan and intent;

23 F. Respondent failed to adjust her diagnosis for the patient based on manic and psychotic
24 symptoms;

25 G. Respondent prescribed an antidepressant which was not FDA-approved for use in
26 adolescent major depression and which was associated with higher morbidity and mortality
27 indices than typical first line treatments;
28

1 H. Respondent failed to monitor the patient's response to an antidepressant medication
2 by standard self-reporting inventories for depression and failed to consider alternatives when it
3 was apparent the patient was not responding to the treatment;

4 I. Respondent failed to refer Patient A to a psychiatrist;

5 J. Respondent failed to respond urgently on information received from the patient's
6 parents to evaluate the patient herself and/or send her to a local emergency room;

7 K. Respondent made undated and untimed late entries in the patient's chart.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Failure to Maintain Adequate and Accurate Records)**

10 25. Respondent Joan M. Lovett, M.D. is subject to disciplinary action under section 2266
11 of the Code. The circumstances are as follows.

12 26. Complainant incorporates the allegations of the First Cause for Discipline as though
13 fully set out herein.

14 27. Respondent failed to keep adequate records in that significant information was
15 reported to her by Patient A's parents, by telephone and in emails, but Respondent failed to
16 document this information in her notes and/or to retain multiple significant email
17 communications. Respondent spoke with Patient A by telephone on June 1, 2015, but this half
18 hour discussion was not charted until several days later in an addendum to the chart. In a
19 subsequent interview, Respondent acknowledged that she did not routinely document everything
20 in her records unless there was a legal proceeding.

21 28. Respondent made entries in the chart for Patient A after the event, which she did not
22 date and time to identify them as late entries.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Board issue a decision:

26 1. Revoking or suspending Physician's and Surgeon's Certificate Number A34054,
27 issued to Joan M. Lovett, M.D.;

1 2. Revoking, suspending or denying approval of Joan M. Lovett, M.D.'s authority to
2 supervise physician assistants and advanced practice nurses;

3 3. Ordering Joan M. Lovett, M.D., if placed on probation, to pay the Board the costs of
4 probation monitoring; and

5 4. Taking such other and further action as deemed necessary and proper.

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7 DATED: August 29, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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